

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3539 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SK PATEL

Versus

DIRECTOR GENERAL OF POLICE & OTHERS

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Appearance:

MR HARDIK RAVAL for the Petitioner

MR NN PANDYA for the respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, a police officer, filed this Special Civil Application before this Court and prayed therein for quashing and setting aside of the select list of the promotion of Dy. Superintendent of Police which is to be directed by this court to be produced by the respondent authority before giving any effect, implementation and restraining the respondent authority from promoting the respondents no.3 and 4 and others and to promote the

petitioner as Dy. Superintendent of Police and to place him above respondents no.3, 4 and others.

2. The petitioner has come up with a case that he has been passed over at the time of promotion of police inspector in the year 1968 and many juniors have been given promotion. The petitioner has further come up with a case that he made a representation against the supersession, but it was not considered properly and instead of giving the promotion to the petitioner, the petitioner was informed about his adverse remarks of the years, 1965, 1966, and 1967. The petitioner has not produced the copy of the letter which is sent to him by the respondent declining any relief against the supersession which has been made in the year 1968. It appears that thereafter the petitioner has approached to this court by filing Special Civil Application No.233 of 1973 and that has come up for decision on 6-2-1978. On this date, this court has passed the order as follows:

Mr.J.T. Nanavaty for the respondents has produced before the court a communication dated 4th February, 1978 bearing No.A/16/SAP/752 and has placed on record a true copy thereof showing that the petitioner is being promoted temporarily to officiate as police Inspector reserving the liberty to continue the departmental proceeding pending against the petitioner. In view of this statement, the orders for promotion of the petitioner and for his posting are being made. I am told that the orders could not be passed as the Inspector General Of Police is out of station and is expected to return on February 15, 1978. The order of promotion in the aforesaid terms and that of posting will be passed upon the return of the Inspector General Of Police. In view of this statement and understanding the learned counsel for the petitioner under instructions from the petitioner withdraws the petition but makes a request to make suitable observations in regard to certain matters. It appears that during the pendency of the petition ad hoc promotions of officers junior to the petitioner were made subject to the result of the petition without considering the claim of the petitioner. These promotions would have been required to be readjusted if the petition was disposed of on merits ad invitum. As the matter is being disposed of in the aforesaid circumstances, this question will have to be considered by the competent authority. The petitioner will be at

liberty to make representation in this behalf to the competent authority and the Government and I have no doubt that the competent authority and the Government will consider the question objectively and will render a solution which is just and fair to all concerned.

The petition will stand disposed of as withdrawn.

Rule is discharged. There will be no order regarding costs. Parties will be at liberty to apply to the Court for directions in case of necessity.

The reading of the order which has been passed by this Court on 6-2-1978 gives out that the petitioner has not pressed before this court his grievance. The counsel for the respondent who was appearing in the aforesaid Special Civil Application had produced before this court a communication dated 4th February, 1978 showing that the petitioner is being promoted temporarily to officiate as police Inspector reserving the liberty to continue the departmental proceeding pending against the petitioner. The counsel for the respondent further made a statement before this Court that the order could not be passed as the Inspector General of Police is out of station and is expected to return in February, 1978. The order of promotion in the aforesaid terms and that of posting will be passed upon the return of the Inspector General of Police. In view of the aforesaid statement and understanding, the learned counsel for the petitioner who was appearing in that Special Civil Application, under the instructions from the petitioner withdrew the petition. He requested the court to make suitable observations in regard to certain matters. Which were those certain matters is also clearly spelled out from the order. Those were the matters that during the pendency of that petition ad hoc promotion of the officers junior to the petitioner were made subject to the result of the petition without considering the claim of the petitioner. These promotions would have been required to be readjusted if the petition was disposed of on merits ad invitum. The counsel for the petitioner contended that as the matter is being disposed of in the aforesaid circumstances, this question will have to be considered by the competent authority. This court has made the observation "that the petitioner will be at liberty to make a representation in this behalf to the competent authority. I have no doubt that the competent authority and the Government will consider the question objectively and will render a solution which is just and fair to all concerned."

3. After this decision of this Court in the aforesaid Special Civil Application the petitioner was given the promotion, but he started to claim the promotion on the post of Police Inspector from 1968. The petitioner has not taken the decision of his supersession on merits, but on the statement that he has been given promotion he had withdrawn that petition. Whether now it is open to the petitioner to raise all these questions? The liberty granted by this court is that both the parties can apply to the court for direction in case of necessity, but liberty was not given by this Court to agitate the claim of promotion from the year 1968, that claim if any made by the petitioner, he has not pressed. If we read the stay order which has been granted by this Court, it was the order passed by this court that promotion to the post of Dy. S.P. will be subject to the result of this petition. That stay order has been granted in the year 1984. The petitioner cannot be allowed to now agitate his claim for promotion from 1968. That claim would not be allowed for other reasons also. By this time his juniors have been promoted and they have acquired the right of future promotion etc. Otherwise also on merits the petitioner has no case. The petitioner's case for promotion has been considered, but he was not found suitable by the departmental promotion committee. From the annexure 'A' which has been filed in the case to the reply, it comes out that the case of the petitioner was considered for promotion for the post of Police Inspector in the years 1968, 1969, 1979, 1971, 1972, 1973, 1974 and 1976. For all these years, he was not considered suitable by the Departmental Promotion Committee. The petitioner has himself admitted that he was informed long back that there were adverse remarks for the years 1965, 1966 & 1967. The respondents have come up with a case that his case was considered for all these years, but his name was not brought on the select list. From the reply filed in this case, it comes out that the petitioner was considered for promotion and his name was brought on the provisional select list in the year 1977. At the relevant time, he was facing the departmental proceeding and as such, he was not given the promotion, but since the inquiry was with regard to a matter 6 1/2 years old, it was taken that this need not come in the way of his promotion and so he was promoted as per the suggestion of the Government Pleader and Special Civil Application No.233 of 1973 filed before this Court was disposed of.

4. The petitioner has a right of consideration for promotion and on the basis of his service record, if he was adjudged unsuitable by the Departmental Promotion

Committee for all the years earlier to 1977, then it cannot be said to be a arbitrary decision. It is not the case of the petitioner that the promotion is to be made on the criteria of seniority alone. This court will not sit as an appellate authority above the decision of the Departmental Promotion Committee. There is no malafide alleged by the petitioner.

5. This writ petition deserves to be dismissed both on merits as well as on the ground that the petitioner has given up his claim for promotion by withdrawing the earlier petition.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged.

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